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RICHARD W. WALKER
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

10 UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 TAEA THALE

13 Plaintiff,

14 v.

15 APPLE, INC.,

16 Defendant.

ADR

Case No.

C11-03778 HRL

COMPLAINT FOR COPYRIGHT
INFRINGEMENT

JURY TRIAL DEMAND

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20
21 Plaintiff Taea Thale ("Plaintiff") complains of Defendant Apple, Inc. ("Apple") as
22 follows.

23 **THE PARTIES**

24 1. Plaintiff is an individual photographer doing business as Taea Thale
25 Photography who resides in Brooklyn, New York.

26 2. Plaintiff is informed and believes that Defendant Apple, Inc. ("Apple") is a
27 California corporation with a principal place of business in Cupertino, California.
28

JURISDICTION

3. This is an action for copyright infringement under 17 U.S.C. §501 *et seq.* This Court has subject matter jurisdiction over the action pursuant to 17 U.S.C. § 501(a) and 28 U.S.C. § 1331.

VENUE AND INTRADISTRICT ASSIGNMENT

4. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400 because the Defendant conducts business within this judicial district, its agents or affiliates can be found in this judicial district, and acts giving rise to this Complaint are believed to have occurred within this judicial district. Pursuant to Local Rule 3.2. (c), Intellectual Property Actions are assigned on a district-wide basis.

BACKGROUND FACTS

5. In her capacity as a professional photographer, Plaintiff took certain photographs of members of a well-known band entitled "SHE AND HIM." Plaintiff retained ownership of copyrights in all of the photographs that she took of SHE AND HIM, including the infringed photograph that is the subject of this action. A true and correct copy of the infringed photograph is attached hereto as Exhibit A.

6. Plaintiff registered her copyright in the subject photograph on April 15, 2010, less than three months before first known publication of the subject photograph. A true and correct copy of Plaintiff's Copyright Registration Number VA0001714422 the subject photograph is attached hereto as Exhibit B.

7. Plaintiff executed only one license of the subject photograph to Merge Media, Ltd. for limited use in magazines or on posters to promote appearances of the SHE AND HIM band. A true and correct copy of the only license for use of the subject photograph is attached hereto as Exhibit C.

8. The license provides that Plaintiff was to be credited in any use of the photographs. The license explicitly excludes the right to use the subject photograph in to promote other entities or products such as with the album release. A true and correct copy of the only license for use of the subject photograph is attached as Exhibit C.

9. Plaintiff has never licensed Apple to use or publish the photograph. Without Plaintiff's knowledge or consent, Apple incorporated the subject photograph into a nationally televised advertisement for the iPhone product ("the Concert Commercial"). On information and belief, the Concert Commercial was aired nationally beginning on or about April 1, 2010 and ran for approximately six to eight weeks. A true and correct copy of a screen capture of the Concert Commercial including the subject photograph is attached as Exhibit D.

10. The Concert Commercial contains and reproduces the subject photograph without the consent or permission of Plaintiff, and was used by Defendant Apple to promote its iPhone product in national advertising.

11. On information and belief, Merge Media released the SHE AND HIM album called “Volume Two” on or about March 23, 2010, immediately prior to Apple’s first airing of the Concert Commercial. Apple’s use of the subject photograph to promote the album release of “Volume Two” exceeds the explicit limitation put on the only license ever granted by Plaintiff in the subject photograph. The license accords no right to use subject photograph to promote an unrelated product such as the Apple iPhone.

COUNT I

COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 501 et. seq.

12. Plaintiff hereby realleges and incorporate by reference Paragraphs 1-11 of this Complaint as though fully set forth herein. Defendant has committed copyright infringement directly, by inducement, or by way of contributory liability, by knowingly aiding, causing, or committing, the unauthorized practice or execution of one or more exclusive rights owned by Plaintiff as set forth in 17 U.S.C. § 106. These exclusive rights having been perfected by U.S. Copyright Registration Number VA0001714422.

13. Apple has realized unjust profits, gains and advantages as a proximate result of its infringement.

14. Unless judicially restrained, nothing prevents Apple from continuing to publish the subject infringing commercial. If so, Apple will continue to realize unjust

1 profits, gains and advantages as a proximate result of its infringement as long as such
2 infringement is permitted to continue.

3 15. Plaintiff is entitled to an injunction restraining Apple from engaging in any
4 further such acts in violation of the United States copyright laws. Unless Apple is enjoined
5 and prohibited from infringing Plaintiff's copyrights, inducing others to infringe Plaintiff's
6 copyrights, and unless all infringing products and advertising materials are seized, Apple
7 will continue to intentionally infringe and induce infringement of Plaintiff's registered
8 copyrights.

9 16. As a direct and proximate result of Apple's direct and indirect copyright
10 Infringement, Plaintiff has suffered monetary loss to her business, reputation, and goodwill.

11 17. Plaintiff is entitled to recover from Apple, in amounts to be determined at
12 trial, the damages Plaintiff has sustained and will sustain, and any gains, profits, and
13 advantages obtained by Apple as a result of Apple's acts of infringement and Apple's use
14 and publication of the copied materials.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for the following relief:

17 A. An order entering judgment in her favor and awarding damages in the amount of her
18 actual damages and any profits of the Defendant attributable to the infringing acts alleged
19 herein, consistent with 17 U.S.C. § 504(a)(1), or, upon election, an award of statutory
20 damages consistent with 17 U.S.C. § 504(a)(2) together with prejudgment and post-
21 judgment interest;

22 B. An order permanently enjoining Apple, its officers, agents, servants, employees,
23 attorneys and affiliated companies, its assigns and successors in interest, and those
24 persons in active concert or participation with it, from continued acts of infringement of
25 the copyright at issue in this litigation.

26 C. An order that all copies made or used in violation of Plaintiff's copyrighted
27 photographs, and all means by which such copies may be reproduced, be impounded and
28 destroyed or otherwise reasonably disposed of;

1 D. An award of full costs and reasonable attorney's fees against Defendant and in favor
2 of Plaintiff pursuant to 17 U.S.C. § 505.

3 E. Any and all other legal and equitable relief as may be available under law and which
4 the court may deem just and proper.

5 **JURY DEMAND**

6 Plaintiff demands a trial by jury on all issues so triable.

7
8 Dated this 1st day of August, 2011.

9 Respectfully submitted,

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26 Attorneys for Plaintiff Taea Thale
27
28

Exhibit A



Exhibit B

Type of Work: Visual Material

Registration Number / Date:
VA0001714422 / 2010-04-15

Application Title: She And Him.

Title: She And Him.

Description: Electronic file (eService)

Copyright Claimant:
Taea Thale.
Taea Thale.

Date of Creation: 2009

Date of Publication:
2010-02-01

Nation of First Publication:
United States

Authorship on Application:
Taea Louise Thale; Domicile: United States; Citizenship:
United States. Authorship: photograph(s)

Rights and Permissions:
Taea Thale, 156 S 1st ST, #12, Brooklyn, NY, 11211, (347)
452-4280, taeta.thale@gmail.com

Names:
Thale, Taea Louise
Thale, Taea
Thale, Taea

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Exhibit C

TAEA THALE PHOTOGRAPHY

PHOTO USAGE AGREEMENT

CLIENT / COMPANY NAME: "SHE & HIM"

C/O PRESS HERE PUBLICITY

ADDRESS: 138 W 25TH ST 9TH FLOOR NY, NY 10001

PHONE: 212. 246. 2640 EMAIL: JEN@PRESSHEREPUBLICITY.COM

TOTAL NUMBER OF PHOTOS COVERED BY AGREEMENT: 4

PHOTO (S) IMAGE NUMBER AND DESCRIPTION:

1.SHE&HIM_MG_9763.JPG

2.SHE&HIM_MG_9896.JPG

3. SHE&HIM_MG_9902.JPG

4. SHE&HIM_MG_9924.JPG

USAGE TYPE: EDITORIAL

PRODUCT (S): MAGAZINE / POSTER

RIGHTS:

NON-EXCLUSIVE;

IN HOUSE USAGE

PRESS RELEASES

PROMOTIONAL MATERIALS

IN STORE POSTERS FOR PROMOTIONS OF APPEARANCES

**(NOT TO BE USED FOR PROMOTION OF ALBUM RELEASE,
SINGLE RELEASE, ETC)**

TERM OF LICENSE:

DISTRIBUTION: NATIONAL / REGIONAL / LOCAL / IN-HOUSE /WEB

NUMBER OF IMAGES: 4

PRESS RUN OR CIRCULATION : 12 MONTHS: JANUARY 1, 2011

CLIENT MUST PROVIDE PHOTO CREDIT

PHOTOGRAPHER'S NAME: TAEA THALE

CORRECT COPYRIGHT DESIGNATION: ©COPYRIGHT 2010 TAEA THALE

FEES

ASSIGNMENT FEE / USAGE:

FEES IN LIEU OF PHOTO CREDIT

FEES ARE IN ACCORDANCE WITH USAGE DISCUSSED. ANY USAGE OUTSIDE OF THESE PARAMETERS WILL BE NEGOTIATED UPON REQUEST FOR A FEE.

Christina Rentz
CLIENT SIGNATURE

Merge Records

Christina Rentz *2/22/10*
PRINTED NAME DATE

PHOTOGRAPHER/STUDIO SIGNATURE

NAME DATE

NO IMAGE ADJUSTMENTS UNLESS APPROVED BY PHOTOGRAPHER

Exhibit D

